

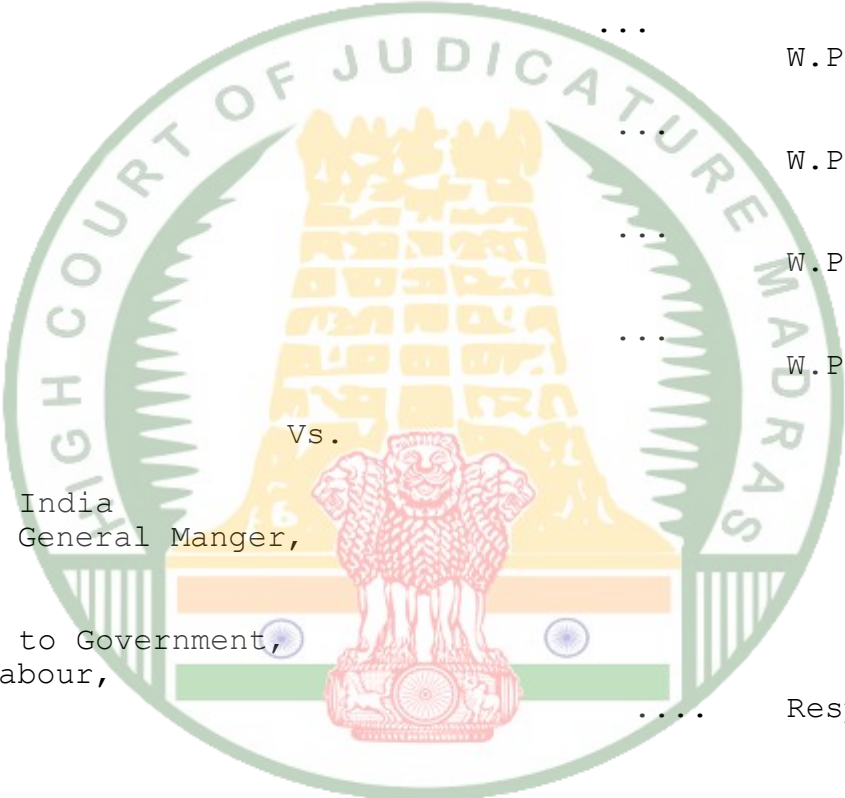
IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01 .2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

W.P.Nos.4776,4777,4778 and 4779 of 2003

C. Rathinasamy	...	Petitioner in W.P.No.4776 of 2003
B.Rengaraj	...	Petitioner in W.P.No.4777 of 2003
V.Elayaperumal	...	Petitioner in W.P.No.4778 of 2003
M.Selvam	...	Petitioner in W.P.No.4779 of 2003
Vs.		
1.State Bank of India rep.by Deputy General Manger, Zonal Office, Trichy -1		 Respondents
2.The Secretary to Government, Ministry of Labour, New Delhi		

Writ Petitions filed under Article 226 of the Constitution of India
praying to issue Writs of Mandamus as stated therein.

* * *

For petitioners
in all the writ petitions

: Mr.V.Govardhan -
for M/s.Row & Reddy

For respondents
in all the writ petitions

: Mr.K.S.Sundar - for R 1
Mr.P.Wilson - For R 2
Asst. Solicitor general of India

C O M M O N O R D E R

W.P.No.4776 of 2003:

The Writ Petition has been filed praying for the issuance of a Writ of Mandamus to direct the second respondent to refer the dispute relating to non-employment of C.Rathinasamy to the appropriate Central Government Industrial Tribunal at Madras.

W.P.No.4777 of 2003:

The Writ Petition has been filed praying for the issuance of a Writ of Mandamus to direct the second respondent to refer the dispute relating to non-employment of B. Rengaraj to the appropriate Central Government Industrial Tribunal at Madras.

W.P.No.4778 of 2003:

The Writ Petition has been filed praying for the issuance of a Writ of Mandamus to direct the second respondent to refer the dispute relating to non-employment of V.Elayaperumal to the appropriate Central Government Industrial Tribunal at Madras.

W.P.No.4779 of 2003:

The Writ Petition has been filed praying for the issuance of a Writ of Mandamus to direct the second respondent to refer the dispute relating to non-employment of M.Selvam to the appropriate Central Government Industrial Tribunal at Madras.

2. Since the issues involved in the above writ petitions have arisen out of the same facts and circumstances, a common order is passed.

3. Heard the learned counsel for the petitioner as well as for the respondents.

The brief facts of the case, as stated by the petitioners, are as follows:-

4. The petitioners had joined the first respondent bank as temporary messengers, on 15.09.1987 in W.P.No.4776 of 2003, 21.11.1987 in W.P.No.4777 of 2003, 11.7.1986 in W.P.No.4778 of 2003, and 9.9.1988 in W.P.No.4779 of 2003 respectively. After completing 480 days of continuous service, in a period of 24 calendar months, they had approached the authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, for conferment of permanent status on the petitioners. The authority concerned had granted the petitioners permanent status from the date of completion of 480 days of continuous service. Since the petitioners had moved the said authority by way of applications claiming permanent status, the management of the first respondent bank had denied employment to the petitioners on the ground that they had raised an industrial dispute before the Assistant Labour Commissioner (Central) Chennai, and that the conciliation had ended in failure. The first respondent bank had informed the petitioners that they were terminated from service, as early as 31.12.1991 in W.P.No.4776 of

2003, 11.3.1993 in W.P.No.4777 of 2003, 25.1.1997 in W.P.No.4778 of 2003 and 20.8.1993 in W.P.No.4779 of 2003, respectively. It was stated on behalf of the first respondent bank that the petitioners cannot be given employment, since there was a settlement under Section 18(1) of the Industrial Disputes Act, 1947, with regard to the employment of temporary employees. In view of the said settlement, the petitioners were not entitled to employment. According to the petitioners, the benefits conferred under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, cannot be taken away by way of a settlement concluded under the Industrial Disputes Act, 1947. Further, it is the case of the petitioners that they are not parties to the 18(1) settlement said to have been concluded earlier. While so, the second respondent by his orders, dated 30.12.1999, had declined to refer the dispute for adjudication stating as follows :-

"I am directed to refer to the failure of Conciliation Report dated 30.09.1999, from the Assistant Labour Commissioner (c) Chennai received in this Ministry on 06.10.1999, on the above subject and to say that prima facie this Ministry does not consider this dispute fit for adjudication for the following reasons:

"The dispute tends to transgress into the agreement reached between the majority Union and the management from which immunity cannot be claimed as an individual disputant. This shall be inconsistent with the agreement between the parties. Also the matter is an issue res - judicata."

5. It is the further case of the petitioners that the petitioners are not parties to the said settlement and they are not members of the union which had signed the settlement. The petitioners have challenged the orders passed by the second respondent, refusing to refer the dispute for adjudication, stating that the powers under Section 10 (1) of the Industrial Disputes Act, 1947, is only administrative in nature and not quasi-judicial and hence, by issuing the impugned orders, dated 30.12.1999, the second respondent had usurped the powers of the quasi-judicial authority. A settlement under 18(1) of the Industrial Disputes Act, 1947, will only bind the parties to the settlement and since the petitioners are not members of the union which had signed the settlement, the second respondent ought to have held that there was a dispute existing to be referred for adjudication, rather than holding that such reference would be inconsistent with the agreement between the parties. The very fact that there are contentious issues between the petitioners and the first respondent bank to be resolved, it would be a fit case for being referred for adjudication.

6. In the counter affidavit filed on behalf of the first respondent, it has been stated that the orders of the second respondent, dated 30.12.1999, not to refer the dispute for adjudication are correct and valid in law. The petitioners cannot be permitted to re-agitate the same

issue before different adjudicating authorities. Further, the petitioners had approached this Court after a long delay and therefore, the writ petitions have to be dismissed on the ground of laches. It has also been contended by the learned counsel Mr.K.Sundar, appearing on behalf of the first respondent that the State Bank of India Staff Federation and the Management of the State Bank of India had entered into settlements, under Section 18(1) of the Industrial Disputes Act, 1947, on 17.11.1987, 16.07.1988, 27.10.1998, 09.01.1991 and 30.07.1996. The settlements were recorded in the minutes before the Regional Labour Commissioner (Central) Hyderabad, on 09.06.1995. The said settlements were entered into considering the numerous claims made by the temporary employees and in view of the relevant provisions under the Industrial Disputes Act, 1947, and the Central Rules. As per the settlements the wait list was to be drawn as per the number of days of service put in by the temporary employees and with regard to the future vacancies that would have risen, upto 31.03.1997. It was agreed that the wait list would lapse on 31.03.1997. As per Clause 7 of the settlement, dated 17.11.1987, it was agreed that no further temporary engagement should be made and if there was any requirement for such engagement, then the wait listed temporary employees alone should be engaged. Accordingly, the temporary employees who had worked for 240 days and who are placed in the top of the list were appointed and other temporary employees who had worked for lesser number of days were wait listed, as per their seniority and the seniority was reckoned as per their respective length of service. Since the petitioners were lower down in the list, they were not appointed. However, the petitioners had filed applications before the authority constituted under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, claiming that they had worked for more than 480 days and that they should be conferred permanent status. The authority concerned had passed orders conferring permanent status on the petitioners by his orders, dated 31.01.1997. The first respondent bank had preferred writ petitions before this Court in W.Ps.No.17573 to 17576 of 1997 to quash the said orders. The said writ petitions are still pending on the file of this court. In such circumstances, the claim of the petitioners to refer the dispute for adjudication cannot be sustained in the eye of law.

7.The learned counsel appearing for the respondent had relied on the following decisions in support of his contentions :-

7.1.In Cheran Transport Employees Union, Coimbatore and Government of Tamil Nadu (represented by its secretary to Labour and Employment Department), Madras and another, reported in 1999 (3) L.L.N, 293, it was held by this Court that if the grounds on which or the reasons for which the Government had declined to make a reference under S.10 are irrelevant, extraneous or not germane to the determination, it is well settled that the party aggrieved thereby would be entitled to move the Court for a Writ of Mandamus under Article 226 of the Constitution of India.

7.2. In the Management of E.I.D. Parry (India) Limited Vs. The Government of Tamil Nadu, reported in 2006 (3) CTC 673, a Division Bench of this Court has held that if there were materials to show that the decision taken by the Government was on 'non-application of mind' or based on some extraneous considerations, this Court could interfere with the decision of the Government, under Article 226 of the Constitution of India.

7.3. In V. Veerarajan and others Vs Government of Tamil Nadu and others, reported in (1987) 1 Supreme Court Cases 479, the Supreme Court had held in a dispute arising out of termination of services of workmen, the Government cannot refuse to make a reference on the basis of its opinion that the domestic inquiry was in conformity with the principles of natural justice and that the punishment of termination of services was disproportionate to the gravity of the offence.

8. Per contra, the learned counsel appearing on behalf of the first respondent has relied on the following cases :-

8.1. In National Engineering Industries Ltd., Vs. State of Rajasthan and others, reported in AIR 2000 Supreme Court 469, the Supreme Court had held that if there is no dispute in existence or apprehended the appropriate Government lacks power to make any reference under Section 10 of the Industrial Disputes Act, 1947.

8.2. In M/s. Shaw Wallace & Co. Ltd Vs. State of Tamil Nadu, reported in 1987 I L.L.J., this Court has held that Sections 10(1) and 12(5) of the Industrial Disputes Act, 1947, make it clear that the appropriate government has the discretion to decide whether a reference should be made or not, even in cases where industrial dispute exists or is apprehended.

8.3. In Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Regd.) and others (1989 II LLJ 550), the Supreme Court has held that under Sections 10 and 10-A are the alternative remedies to settle an industrial dispute. Once the parties have chosen the remedy under Section 10-A, the Government cannot refer the same dispute for adjudication under Sec. 10. If any such reference is made, it is invalid.

8.4. In Prem Kakar Vs State of Haryana and another, reported in (1976) 3 Supreme Court Cases 433, it has been held that the order of the Government acting under Section 10(1) read with Section 12(5) of the Act, is an administrative order and not a judicial or quasi-judicial one. Only if it appears from the reasons given that the Government took into account any irrelevant or foreign consideration that the Court may in a given case interfere.

8.5. In Secretary, Indian Tea Association Vs. Ajit Kumar Barat and others, reported in AIR 2000 Supreme Court 915, it has been held as follows :-

"The appropriate Government would not be justified in making a reference under S.10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the government to indicate the nature of dispute in the order of reference. The order of the appropriate Government making a reference under S.10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi judicial order. An order made by the appropriate Government under S.10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government. If it appears from the reasons given that the appropriate government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a Writ of Mandamus. It would however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act."

9. On a perusal of the records available and the decisions cited and on hearing the rival contentions of the learned counsels appearing on behalf of the petitioners as well as for the respondents, it is clear that there are contentious issues that need to be resolved by adjudication in accordance with law. One such issue is whether the petitioners have been confirmed in service as permanent employees in accordance with the provisions of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. If so, whether the alleged termination of the employees from service is valid in the eye of law. Further, an issue has also been raised by the first respondent with regard to the petitioners being parties to the settlement entered into under the provisions of Industrial Disputes Act, 1947, which has been disputed by the petitioners. In such circumstances, it would not be appropriate for the second respondent to decide such issues which require proper adjudication. Further, no prejudice would be caused to any of the parties concerned, if such issues are open for adjudication before the concerned forum. On the other hand, non-reference of such contentious issues by the second respondent, for adjudication, could prejudice the petitioners, as they would not have a chance of having such issues adjudicated upon. Referring a matter for adjudication should in normal circumstances, be the rule and denial of such reference can only be an exception.

10.In the facts and circumstances of the case, it is found that there are a number of issues which require scrutiny by a forum having the power to adjudicate in accordance with law. Hence, the second respondent is directed to refer the dispute relating to the non-employment of the petitioners to the appropriate forum for adjudication in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Hence, the writ petitions are allowed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Deputy General Manger,
The State Bank of India,
Zonal Office,
Trichy.

2.The Secretary to Government,
Ministry of Labour,
New Delhi

+ Four ccs to Mr.K.S.Sundar, Advocate Sr.Nos.5428, 5429, 5426, 5427.

+ Four ccs to M/S.Row & Reddy, Advocate Sr.No.5299.

+1 cc to Mr.P.Wilson, Advocate Sr No.5178.

NG(CO)
dcp/9.2.07

सत्यमेव जयते

WRIT PETITION No.4776 of 2003
WEB COPY